IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.180 OF 1990

1. Parvati Peera Atole
2. Machindra Parvati Atole
3. Smt.Namabai Parvati Atole ...Appellants

vs.

The State of Maharashtra ...Respondent

Mr.Rahul Kate for the Appellants
Mr.A.S.Shitole, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : NOVEMBER 21 and 22,2006.

ORAL JUDGMENT:

1. This is a shocking case where a married woman died unnatural death within a span of six weeks from the date of her marriage. The Appellants are the accused. The first Appellant is the father-in-law of the deceased. The second Appellant is the husband of the deceased and the third Appellant is the mother in law of the deceased. By impugned Judgment and Order dated 19th march 1990 passed by the learned Additional Sessions Judge, Baramati, Pune, the Appellants have been convicted for offences punishable under sections 498-A read with section 34, section 306 read with section 34, 304-B read with section 34 of the Indian Penal Code (hereinafter referred to as the Penal Code) and sections 3 and 4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as the said Act of 1961).

2. The case of the prosecution can be summarised as under :

(i) One Shri Rajaram Manikrao Nale, the father of the deceased

is the resident of village Karha-Wagaj, Taluka Baramati, District Pune. The name of the deceased was Venubai. One Gopinath had proposed the Accused No.2 as a match for deceased Venubai. On 6th December 1987, the Accused Nos.1 and 2, the maternal uncle of the accused No.2 and Gopinath came to the house of the complainant Rajaram. A meeting for settlement of the terms of the marriage was held at the residence of the complainant. The Accused No.1 at the first instance demanded a dowry of Rs.15,000/- and also made a demand that the complainant should bear the expenses of both the sides of the marriage ceremony. The complainant Rajaram did not agree for the figure of Rs.15,000/-. After discussion, it was agreed that Rajaram would pay a sum of Rs.10,000/- to the accused No.1 as dowry and he will also bear the marriage expenses. It was agreed that the marriage would be solemnised on 15th December 1987 in the village of the complainant. The agreed dowry amount was paid on or about 7th or 8th December 1987. The marriage was solemnised on 15th December 1987. The complainant also paid the expenditure incurred by the accused on the marriage ceremony. After the marriage ceremony, one Chandrabhagabai, the married sister of the complainant accompanied the deceased to her matrimonial home as her companion. After staying for two days at matrimonial home, the deceased Venubai along with said Chandrabhagabai came back to the Complainant’s home on 21st December 1987. The deceased told her father-the complainant that accused had demanded a

sum of Rs.5000/-, a golden ring and a cot with mattresses and had directed her to bring the articles while returning back to the matrimonial home. The deceased told him that if compliance with the demands was not made, the accused had told her that they would not maintain her.

(ii) On 18th January 1988, the accused No.1 had visited the residence of the complainant for the purpose of taking back the deceased to her matrimonial home. On the instructions of the complainant, his sister Chandrabhagabai accompanied the deceased along with accused No.1 to the matrimonial home of the deceased. The Accused No.1 had brought a bullock Cart with him. While the deceased and Chandrabhagabai were leaving with accused No.1 by the bullock cart, the complainant handed over to them a cot along with mattresses and two pillows as well as some sweets. The complainant told his daughter that he would send Rs.5000/- and a golden ring in due course. On 21st January 1988, the complainant made an arrangement for Rs.5000/- as well as for purchase of a golden ring by selling his bullock. He came back at about 4.00 p.m. on 21st January 1988 to the village after selling his bullock. Two persons came to his house and informed him that his daughter Venubai has died due to drowning in the well. On receiving information, the complainant along with his relatives proceeded to the village where the accused were residing. He saw that the dead body of his daughter was kept on a platform

outside the house of the accused. After inquest panchanama was recorded, the dead body was shifted to Baramati Hospital for the purpose of post mortem. On 22nd January 1988, post mortem was performed in Silver Jubilee Hospital at Baramati.

(iii) According to the case of the complainant, on 22nd January 1988, he visited to Baramati Police Station to file a complaint. However, the police did not take his complaint. Therefore, he filed an application on 23rd January 1988 with the Sub Inspector of Police, Baramati making allegations of commission of offence against the accused. On the same day, Shri Shirke, Police Sub Inspector attached to Baramati Police Station recorded a statement of the complainant. According to the case of the prosecution as the complainant was not satisfied with the investigation carried out by the police, he filed a complaint in writing on 19th February 1988 to the Minister of State, Department of Home, Government of Maharashtra. In the said complaint, a prayer was made for transfer of investigation to C.I.D. Crime Branch. Accordingly, the investigation was carried out by the authorities of C.I.D. Crime.

3. I have extensively heard the submissions of Shri Kate the learned Advocate for the Appellants. His main submission is that the evidence of the prosecution witnesses is not trustworthy and therefore the prosecution has not proved the

demand of dowry of Rs.10,000/- and the acceptance thereof by the accused No.1. He submitted that in any event, after the alleged payment of the said amount of Rs.10,000/-, there is absolutely no evidence on record to show that there was any demand for dowry made by any of the accused. He submitted that apart from the fact that the death of the deceased occurred due to accidental fall in the well while the deceased was trying to fetch water from the well, there is absolutely no evidence to show that after the marriage soon before her death Venubai was subjected to cruelty or harassment by the accused in connection with the demand for dowry. He submitted that thus none of the ingredients of offence under section 304-B were proved by the prosecution. He submitted that the evidence led by the prosecution witnesses as regards demands made by the Appellants-accused for a sum of Rs.5,000/-, a golden ring and a cot with mattresses is clearly an afterthought as the complainant has not come out with the case of such demands in the F.I.R. as well as in his police statement. He submitted that same is the case with other prosecution witnesses who have made improvement at the time of recording of the evidence by stating about aforesaid demands. He submitted that in any event, none of the witnesses deposed about any harassment or cruelty by the accused to the deceased after marriage. He submitted that the deceased stayed in her matrimonial home only for few days. There is absolutely no evidence to show any cruelty or harassment to the deceased.

He submitted that the conviction under section 304-B and section 498-A is uncalled for. Even the offence under section 306 is not at all proved. Without prejudice to the aforesaid submissions, he submitted that even assuming that the prosecution case is proved, the demand of dowry of Rs.10,000/- and the acceptance was only by the accused No.1 and therefore the conviction of the accused No.2 and 3 for the offences under section 3 of the said Act of 1961 was not at all established.

4. The learned Additional Public Prosecutor supported the impugned Judgment by pointing out that the demand for the sum of Rs.5,000/- along with a golden ring and a cot with mattresses was made immediately after marriage and the deceased was threatened that unless the said demands were complied with, she would not be allowed to stay with the Appellant No.2. He pointed out that after the deceased returned to her matrimonial home on 18th January 1988, accused persons harassed her for her failure to bring a sum of Rs.5000/- and a golden ring. He submitted that there is a clear evidence of harassment and mental cruelty. He submitted that the acts of cruelty and harassment have taken place immediately before the death of the deceased. He submitted that the circumstances clinchingly show that the death is not caused in the normal circumstances. He also placed reliance on various decisions of the Apex Court.

5. With a view to appreciate the submissions made by the learned Advocate for the Appellants, it will be necessary to refer to the evidence of the prosecution witnesses. P.W.No.1 Rajaram Manikrao Nale is the father of the deceased. In the examination in chief, Rajaram described his relationship with other prosecution witnesses. He stated that he was working as a Typist in the office of Malegaon Sugar Factory since 1960 and he was holding a bank account with Poona District Central Bank at Malegaon. He stated that one Gopinath had proposed the accused No.2 as a match for his daughter Venubai. The said Gopinath was working as a teacher in a nearby village and the accused no.2 was also working as a teacher in the same school in which Gopinath was employed. The school was at village Sabalewadi which is at distance of 8 to 9 kilometres from village Gojubavi where the accused have been residing. On 6th December 1987, the accused Nos.1 and 2 , the maternal uncle of the accused No.2 and the said Gopinath visited the house of the complainant for a meeting for settlement of the terms of the marriage. He stated the names of the persons who were present in the said meeting along with him. According to his case, the accused No.1 demanded a dowry of Rs.15,000/-. He also demanded that the entire expenses of the marriage should be borne by the complainant. According to the complainant, he expressed that the demand of Rs.15,000/- was on the higher side. Ultimately, after discussion, the amount

of dowry was settled at Rs.10,000/- and P.W.1-Rajaram agreed to bear the marriage expenses of both the sides. The marriage was solemnised on 15th December 1987 in the village Karha-Wagaj i.e. the village of the complainant. According to the case of the complainant, he withdrew certain amount from his bank account for paying the dowry and for meeting the expenses of marriage ceremony. According to him the dowry amount was paid by him on 7th December 1987.

6. The deceased daughter of P.W.No.1 went to reside at her matrimonial home and the sister of P.W.No.1 accompanied the deceased as her companion to the matrimonial home. Both of them came back to the house of the complainant on 21st December 1987. P.W.No.4 Ashok and P.W.No.8 had gone to bring the deceased. They brought deceased and Chandrabhagabai in the house of the P.W.No.1. The deceased told the first informant that the accused Nos.1 to 3 demanded a sum of Rs.5,000/-, a golden ring and a cot with mattresses and they directed her to bring the said articles while returning to the matrimonial home. She informed the complainant that the accused have threatened her that they would not maintain her if the said articles were not brought by her along with the amount of Rs.5000/-. According to him, he purchased a cot and mattresses on 14th January 1988. He produced a proof of cash memo issued by the shop for the price of the cot. The cash memo was admitted in the evidence at Exh.18. He stated that

he purchased mattresses and two pillows from Azad Gadi Karkhana on the same day. For purchasing the said articles, the complainant paid the price for which a cash memo was issued. The said cash memo was admitted in evidence at Exh.19.

7. The P.W.No.1 further stated that on 18th January 1988, the accused No.1 visited his house for taking Venubai back to her matrimonial home. The Accused No.1 had brought a bullock cart. The Accused No.1 took with him the deceased-daughter of the P.W.No.1 and the said Chandrabhagabai. At that time the P.W.No.1 handed over the cot with mattresses and two pillows to them. He went to Baramati on 21st January 1988 for attending bazar. We went there for selling his bullocks. He wanted to sell the bullock for raising the amount of Rs.5000/- and for purchasing a golden ring. He stated that he sold a bullock to one Tatyaram Virkar from Village Saval at the price of Rs.2650/-. The receipt allegedly issued by the said Tatyaram was admitted in evidence and marked as Exh.20. He stated that on the same day, he returned to his village. At about 4.00 p.m., two persons from village Gojubavi came to his residence and informed him that Venubai died due to drowning in the well. Immediately thereafter, the P.W.No.1 and other persons went to village Gojubavi where the matrimonial home of the deceased was located. He noticed that the dead body of his daughter was kept on a platform outside the house of the

accused. He stated that as he was a patient of high blood pressure, he was asked not to wait there for a long time and to return back to his village. Accordingly, he went to village Karha Wagaj. He stated that post mortem was performed on 22nd January 1988 at Baramati. On 21st January 1988, he enquired with the accused No.2 regarding the cause of death. The Accused No.2 unconvincingly stated that the deceased died due to drowning in the well. He stated that though he had approached the Baramati Taluka Police station to lodge the complaint, the police did not take the complaint and therefore, he filed an Application on 23rd January 1988 to the Police Sub Inspector making allegation of commission of offence by the Appellants. He stated that his statement was recorded by the Police Sub Inspector on 23rd January 1988. He stated that as he was not satisfied with the investigation carried out by the police, he applied for transfer of the investigation and accordingly investigation was transferred. In the cross examination, he admitted that in his community there is a custom to offer a cot with mattresses both to the bride and bridegroom. He stated that he incurred heavy expenses on the marriage ceremony.

8. His attention was invited to his police statements dated 23rd January 1988 and 15th March 1988. He admitted that he had not mentioned the fact that accused demanded Rs.15,000/- as dowry and the matter was settled at Rs.10,000/-. He

admitted that he has not mentioned in the statement dated 15th March 1988 the fact that deceased informed that the accused persons were demanding Rs.5,000/- and a golden ring. He admitted that he had not stated in the said statement that the deceased had told him that the accused had threatened her that they would not maintain her if she failed to bring an amount of Rs.5,000/- and a golden ring. Various suggestions were put to the P.W.No.1.

9. P.W.No.2 Chandrabhagabai Baburao Ponkule is also an important witness. She is the sister of the complainant-Rajaram. It is stated that on the date of marriage, she accompanied the deceased to her matrimonial home as her companion . She stated that both of them were staying with the Appellants for about five days. She stated that the accused started asking Venubai as to why a cot along with mattresses and a golden ring and cash of Rs.5000/- was not given in marriage. It is alleged that the accused No.3 told the deceased that even a son of cobbler in the village had received a cot with mattresses in the marriage. She stated that all these talks took place in her presence. She stated that she accompanied the accused no.1 and the deceased to her matrimonial home on 18th January 1988. They carried a cot, mattresses and two pillows with one bed sheet in the same bullock cart. She stated that as per the custom of the community, the sweets carried with them were distributed

amongst various families. In the night on the very day, the accused No.2 asked the deceased as to why she did not bring a golden ring and a cash of Rs.5,000/-. The Accused No.2 also told the deceased that he did not like her and he had agreed for marriage only for receiving money. She specifically stated that she heard the said conversation in the house of the the accused. On the next day, she returned back to her house with her nephew Nivrutti Nale. After coming back, she

informed the complainant-Rajaram and his wife to make an arrangement for a golden ring and a cash of Rs.5000/-. She informed Rajaram that the accused were demanding the same from the deceased. The P.W.No.2 was cross examined by the Advocate appearing for the Appellants. In the cross examination she stated that though she had told the police that she had informed her brother to make an arrangement for a golden ring and cash of Rs.5000/-, she cannot assign any reason why the police did not record the said facts in her statement. She also admitted that though she had told the police that on 25th January 1988 that accused No.2 had told the deceased Venubai that he did not like her and he had performed the marriage for the sake of money, she was unable to assign any reason as to why the police did not record the said aspect in her statement. She denied the suggestion that she was deposing falsely.

10. P.W.NO.3 Gopichand Sarjerao Atole was working as a primary teacher in a school at Sabalewadi. He brought the proposal of the accused No.2 for Venubai. He stated that a meeting was held on 6th December 1987 and he attended the said meeting. He stated that the accused No.1 demanded a sum of Rs.15,000/- in cash and stated that marriage expenses shall be borne only by the P.W.No.1. He stated after the discussion between the persons who were present, P.W.No.1 Rajaram agreed to give a cash of Rs.10,000/- to the accused No.1 and he also agreed to bear the expenditure of both the sides. He stated that the marriage was solemnised on 15th December 1987. There is nothing relevant in his cross examination except the denials recorded at the instance of the Advocate for the Appellants.

11. P.W.No.4 Ashokrao Balasaheb Gadhve is the relative of P.W.No.1 Rajaram. He stated that Rajaram's wife is his wife's cousin. He stated that he attended the meeting held on 6th December 1987 for discussing the terms of marriage. He deposed about the demand of Rs.15,000/- as a dowry by the accused No.1 and a demand made by him that expenses on marriage by both the parties should be borne by the P.W.No.1 Rajaram. He stated that Rajaram expressed that a sum of Rs.15,000/- was on the higher side. He deposed that ultimately it was agreed that the P.W.No.1 Rajaram should pay Rs.10,000/- as dowry and he will bear the expenses of both the

sides on the marriage. He stated that after two-three days after the meeting, an amount of Rs.10,000/- was paid by the P.W.No.1 to the accused No.1. He stated that on 21st December 1987 he along with Nivrutti Nale went by two motor cycles to bring back Chandabhagabai-P.W.No.2 and Venubai. He stated that Venubai occupied the pillion seat on his motor cycle and Chandrabhagabai occupied the pillion seat on the motor cycle of Nivrutti. Venubai informed him on the way that the accused Nos.1 to 3 were demanding a cash of Rs.5000/- and a golden ring and a cot with mattresses. He stated that Venubai was asked to bring the same at the time of her return otherwise accused would not maintain her. On 21st January 1988, when he attended the Bazar at Baramati, he met P.W.No.1 Rajaram in the afternoon. P.W.No.1 informed him that for meeting the demand of Rs.5000/- he had sold one of his bullocks at the price of Rs.2650/- and he would make arrangement for raising rest of the amount. Thereafter, he described as to how information was received as to death of Venubai.

12. In the cross examination he admitted that he did not state before the police that Rajaram told him about the demand of Rs.5000/- by the accused persons when he met Rajaram at Baramati. He stated that when he along with Rajaram reached village Gojubavi at about 6.00 p.m. on 21st January 1988, many persons had assembled including Police Patil and Village Kotwal. Police had also came there. He stated that he

attended the funeral on next day. He stated that on 22nd January 1988, he along with P.W.No.1 Rajaram visited Baramati Taluka Police Station.

13. P.NO.5 Azij Mubarak Shaikh was examined to prove the purchase of mattresses and pillows by P.W.No.1 from Azad Gadi Karkhana. In his evidence he proved the receipt at Exh.19 issued to P.W.No.1 regarding the purchase of one mattress and two pillows. In the cross examination he stated that P.W.No.1 Rajaram was a new customer and he had not purchased any article from his shop earlier.

14. P.W.No.6 Abbasbhai Abdul Kadir the Proprietor of Maharashtra Machinery Stores, Baramati was examined to prove the purchase of iron cot by P.W.No.1 Rajaram. He proved the bill at Exh.18 as well as Marathi translation of the bill which was in Gujrati language. In the cross examination he admitted that the bill at Exh.18 does not carry any serial number and that he had not maintained a carbon copy of the said bill. He denied the suggestion that Rajaram had not purchased a cot from him.

15. P.W.No.7 Tatyaba Namdeo Virkar is the person who allegedly purchased one bullock on 21st January 1988 from the P.W.no.1 at the price of Rs.2650/-. He proved the receipt executed by P.W.No.1 Rajaram which is at Exh.20 in the

evidence. In the cross examination he admitted that he is dealing in business of purchase and sale of the bullocks. He proved the receipt at Exh.20 issued in respect of the said transaction. He admitted that a receipt is issued by the market committee in respect of each transaction. However, for the transaction with P.W.No.1, a receipt of the market committee was not obtained. He denied the suggestion that the receipt at Exh.20 must have prepared afterwards.

16. P.W.No.8 Nivrutti Nale stated that Venubai was his cousin. He stated that on 21st December 1987 he had gone along with P.W.No.4 Ashok by two motor cycles to bring back Venubai from her matrimonial home. He stated that Venubai occupied the pillion seat of the motor cycle driven by Ashok and Chandrabhagabai occupied the pillion seat of his motor cycle. He stated that on his arrival in the house of P.W.No.1 Rajaram, Venubai told all of them that her in-laws and husband were demanding a sum of Rs.5,000/- and a golden ring and a cot and mattresses. She also stated that if the said articles were not supplied, accused told her that they would not maintain her. He stated that on 19th January 1988 the accused No.1, Venubai and Chandrabhagabai went to the matrimonial home of the accused along with a cot and mattresses and two pillows provided by Rajaram. He stated that on 20th January 1988 he went to the matrimonial home of the deceased and brought back Chandrabhagabai by his motor cycle. While he was leaving the

village Gojubavi, Venubai told Chandrabhagabai to convey her message to her father to send a cash of Rs.5000/- and a golden ring. There is nothing particular in the cross examination except the denials to the suggestion given by the Advocate for the accused.

17. P.W.No.9 Tukaram Nale stated that P.W.No.1 was his maternal uncle. He attended the meeting for fixing the marriage of Venubai. He described the terms put forward by the accused and the agreement reached by which P.W.no.1 Rajaram agreed to pay Rs.10,000/- and also to bear expenses of both sides incurred in marriage ceremony. He stated that there were four marriages performed on 15th December 1987 including the marriage of Venubai with the accused No.2. He was incharge of the four marriages. He stated that a sum of Rs.10000/- was paid by P.W.No.1 Rajaram to accused Nos.1 and 2 on 7th December 1987. He stated that after her return, on 21st December 1987, Venubai told her father regarding demand of accused Nos.1 to 3 of a cot with mattresses, a golden ring and a cash of Rs.5000/-. He also stated that accused had threatened her that if the articles were not supplied as per the demand, they would not maintain her. He stated that on 19th January 1988, when Venubai departed in the company of Chandrabhagabai along with accused No.1, he was present. He stated that Chandrabhagabai carried a cot with mattresses as well as a bed sheet and this was carried in the bullock cart

brought by accused No.1. He stated that Rajaram told Venubai that he would make arrangement for sending a golden ring and a cash of Rs.5000/- within two days. He stated that on 21st January 1988 P.W.No.1 Rajaram met him at Bazar at Baramati. P.W.No.1 informed him that he had raised a sum of Rs.2650/- by selling his bullock and he would pay Rs.5000/- and a golden ring to Venubai within two days. He stated that his statement was recorded on 23rd January 1988 by the police and on 15th March 1988 by the C.I.D. Crime Branch. He stated in the examination in chief that dead body of Venubai was found in the third well in the property of the accused which is situated at a far away distance from the house of the accused.

18. In the cross examination he stated that though he had stated about the existence of three wells on 23rd January 1988, he was unable to assign any reason why the police did not record the said fact in his statement. He also admitted that he had not specifically stated that a sum of Rs.10,000/- was paid to the accused on 7th December 1987. He denied the various suggestions given to him in the cross examination.

19. P.W.10 Sopana Anand Atole stated that the accused no.1 is his paternal uncle. The said witness was declared hostile at the instance of the prosecution. The Prosecutor was permitted to cross examine him. In the cross examination he stated that on 21st January 1988, Savitribai, the daughter-in-law of the

accused No.1 came to his residence. He stated that Savitribai enquired with him about Venubai. He stated that his place of residence is about 2 furlongs from the matrimonial house of Venubai. He stated there are three wells in the property of the accused. The third well is at a half distance between the two house. He stated that he told Savitrabai to see whether Venubai had gone to fetch water from well and to ascertain whether the water pot was in the house. He stated that the first well is at the distance of 100 ’ from the house of accused. He stated that the second well is at the distance of 100’ from the first well. He stated that the water from the second well is unfit for drinking. He stated that he jumped in the third well and brought out the body of Venubai. He stated that he was not aware whether Venubai was dead or alive. He stated that he carried Venubai to the platform of the house of accused and she was dead at that time. He stated that he therefore went to the Police Patil when he learnt that the Police Patil had gone to Baramati. He therefore started walking towards Baramati. On the way he met Laxman. He was riding a Moped. He proceeded with Laxman towards Baramati. On the way they met Police Patil. They brought Police Patil to the village. He narrated the incident to the Police Patil. He stated that on the next day after arrival of Police, he brought out Handa (water pot) out of the well.

20. P.W.No.11 Maruti Yeshwant Atole was working as a Police

Patil of the village who described about the information given to him by Sopana Atole about finding a dead body in the well. He proved the document at Exh.46 which is the report submitted by him about the incident to the P.S.I. of Baramati Taluka Police Station.

21. P.W.No.12 is one Jaideo Yeshwant Dhimdhime who was the Investigating Officer attached to C.I.D. Crime Branch. He came into picture on 11th March 1988 when the investigation was entrusted to C.I.D. He stated that he recorded the statement of witnesses on 15th March 1988 and statement of one witness on 11th April 1988. Certain portions of the statements of witness Sopana were proved in his evidence.

22. P.W.No.13 Dinkar Shripatrao Shirke is the police Officer who had on 21st January 1988 registered A.D.No.1 of 1988 at Baramati Taluka Police Station. He recorded the statement of Sopana on 22nd January 1988. He stated that he was informed by the father of the deceased regarding his grievance against the Police Head Constable Patil (P.W.No.15) and thereafter he himself took over the investigation. He stated that on 23rd January 1988, P.W.No.1 Rajaram filed a complaint Application to him. He stated that he recorded the statement of P.W.No.1 on 23rd January 1988 and the other witnesses thereafter. In the cross examination, he stated that when he recorded the statement of P.W.No.2 Chandrabhagabai on 25th January 1988,

P.W.No.2 stated before him that she had informed her brother to make arrangement for a golden ring and a sum of Rs.5000/- and a cot with mattresses. He also stated that the said witness did not tell before him that the accused No.2 told Venubai in the night that in fact he did not like her and that he had performed marriage for the sake of money.

23. P.W.No.14 Dadu Shau Shelke was a Police Constable attached to Special Branch of Baramati Taluka Police Station. At the relevant time he was on duty at the Police Station. He recorded the report of the Police Patil on 21st January 1988.

24. P.W.No.15 Baliram Bhaurao Patil was the Police Head Constable at the relevant time attached to Baramati Taluka Police Station. He drew inquest panchanama and spot panchnama. In examination-in-chief he stated that Sopana brought water pot on the ground from well as per his directions. He stated that water pot was not visible in the well from the ground. He stated that he himself handed over the investigation to P.S.I. on 22nd January 1988. He stated that P.W.No.1 Rajaram filed a complaint application against him in the police station. He stated that P.S.I. Shirke had took over investigation immediately after receiving a telephone call from the P.W.No.1. At this stage, permission was granted by the learned Trial Judge to the Prosecutor to ask questions in the form of cross examination to the

P.W.NO.15. He stated that he did not notice water pot in the well till 9.00 a.m. in the morning of 22nd January 1988. He stated that he did not feel it necessary to record supplementary statement of Sopana as regards taking out the water pot. He denied the suggestion that he deliberately avoided to record the statements of relevant witnesses.

25. Apart from this oral evidence, there is a documentary evidence in the form of post mortem notes and report of the chemical analyser. It will be necessary to refer to post mortem notes at Exh.16. Column No.17 of the post mortem notes reads thus :

"17. Surface wounds and injuries - their nature, positions dimensions (measured) and oiaections to be accurately stated their probable age and cause to be noted :	1) Tiny abrasions over middle of chin. 2) Superficial abrasion over middle of (L) forearm.

. Column Nos.18 and 19 disclose that except for aforesaid injuries, there were no external injuries on the person of the deceased. The cause of death recorded in P.M.notes reads thus:

"In our opinion death is due to asphyscia due to drowning however viscera is preserred to know possibility of any poisoning."

. Viscera was sent to the Chemical Analyser. The report of the Chemical Analyser at Exh.48 discloses that the same did not contain any poison or poisonous material.

26. All the three accused were convicted for offences punishable under section 3 and 4 of the said Act of 1961. Section 3 provides for penalty to any person who gives or takes or abets giving or taking of dowry. The minimum punishment prescribed is imprisonment for five years with fine which shall not be less than Rs.15,000/- or an amount of the dowry whichever is more. The learned Trial Judge has sentenced the accused to undergo R.I. for five years each and to pay fine of Rs.15,000/- each. Section 4 of the said Act of 1961 provides that if a demand is made for dowry by any person, he shall be punished with imprisonment for not less than six months but which may extend to two years with fine which may extend to ten thousand rupees.

27. P.W.No.1 Rajaram stated in his evidence that a meeting held on 6th December 1987 which was attended by the accused Nos.1 and 2. The Accused No.3 obviously was not present in the said meeting. He stated that the accused No.1 demanded

dowry of Rs.15,000/-. He deposed that finally the figure of Rs.10,000/- was agreed. He stated that he paid a sum of Rs.10,000/- to the accused persons towards dowry and incurred expenditure on the marriage. Thus, at the time of making demand on 6th December 1987, the accused No.3 - mother-in-law of the deceased was not present. The P.W.No.3 Gopichand was also present on 6th December 1987 who disclosed that the accused Nos.1 and 2 were present. He has not deposed about the presence of the accused No.3. He stated that the P.W.No.1 was to pay Rs.10,000/- to the accused No.1. P.W.No.4 Ashokrao Gadhave was also present in the meeting held on 6th December 1987. He stated that initially a demand was made by the accused No.1 for Rs.15,000/-. Finally accused Nos.1 and 2 agreed to accept a sum of Rs.10,000/-. He stated that P.W.No.1 Rajaram agreed to pay Rs.10,000/- to accused No.1 after two to three days. In the deposition of P.W.No.9 Tukaram Nale, it is stated that on 6th December 1987 the accused Nos.1 and 2 were present when demand of Rs.15,000/- was made by the accused No.1. He stated that the amount of Rs.10,000/- was paid on 7th December 1987 to the accused Nos.1

and 2 by P.W.No.1 Rajaram.

28. Thus, so far as accused No.3-mother-in-law of the deceased is concerned, there is no evidence to show that she directly or indirectly demanded any dowry or she has taken the

dowry from the P.W.No.1-Rajaram. Thus, the conviction of the accused No.3 for offence under section 3 cannot be sustained.

29. So far as accused No.2, the husband of the deceased is concerned, as pointed out above, there is an evidence on record to show that the P.W.No.1 paid Rs.10,000/- to the accused Nos.1 and 2 two or three days after the meeting held on 6th December 1987. The evidence shows that at the time of making demand, the accused No.2 was very much present in the meeting. In fact, as narrated above, P.W.No.4 stated that both the accused Nos.1 and 2 ultimately agreed to receive an amount of Rs.10,000/-. There is an evidence to show that the accused No.1 along with the accused No.2 accepted dowry of Rs.10,000/- from the P.W.No.1 Rajaram. So far as the accused No.1 is concerned, there is very consistent evidence of all the relevant witnesses which clearly establishes the demand and acceptance of the dowry by him. There is consistent evidence of the witnesses which establishes the presence of the accused No.2 along with the accused No.1 at the time of demand of Rs.15,000/- and acceptance of sum of Rs.10,000/-.

30. Thus, no fault can be found with the conviction of the accused Nos.1 and 2 under sections 3 and 4 of the said Act of 1961. So far as the sentence is concerned, section 3 of the said Act of 1961 does not leave any choice. The minimum punishment of five years and minimum fine of Rs.15,000/- has

been provided in the section and that is the punishment awarded by the learned Trial Judge. As stated above, all the prosecution witnesses who were present on 6th December 1987 in the meeting are very consistent about the initial demand of Rs.15,000/- by the accused No.1. There is also a consistent evidence of subsequent acceptance of Rs.10,000/- as dowry by the accused Nos.1 and 2. There is absolutely no reason to disbelieve the version of the prosecution witnesses in that behalf . Considering the manner in which the demand of dowry is made it is obvious that adequate and special reasons do not exist for reducing the sentence and fine.

31. So far as the offence under section 304-B of the Indian Penal Code is concerned, firstly there has to be a death of a woman caused by any burns or any bodily injuries or the death must have occurred otherwise than under normal circumstances within 7 years of her marriage. Secondly, it must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any other relative for, or in connection with, any demand for dowry. Section provides that the such death shall be called as a dowry death and the such husband or such relative of the husband shall be deemed to have caused her death. Explanation to sub section 1 incorporates the definition of dowry under the said Act of 1961 in the sub-section 1. The Section 2 of the said Act of 1961 defines ‘dowry’ as under :

"2. Definition of "Dowry" -

. In this Act, "dowry" means property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

. at or before [or any time after the marriage] [in connection with the marriage of said parties but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shairat) applies.

It must be borne in mind that the property or valuable security which is called as a dowry can be given even any time after the marriage. However, the only condition is that it must in connection with the marriage.

32. In facts of the case what has been established as stated

above is the demand of Rs.15,000/- made by the accused Nos.1 and 2 before the marriage. Out of the said demand a sum of Rs.10,000/- was paid by P.W.No.1. Therefore, it cannot be said that there was any cruelty or harassment by the accused to the deceased in connection with the said demand of Rs.10,000/-. The case of the prosecution is based on the subsequent demand by the accused of a sum of Rs.5,000/- and a golden ring. The main submission of the Appellant is that the theory as regards demand of Rs.5,000/- and a golden ring and a cot with mattresses was an afterthought in the sense that the said demand of dowry does not find place in the F.I.R. or in the statements of the witnesses. The question is whether the said demand is established and whether the said demand can be said to be a demand for dowry. If the said demand is established and it is held that it is a demand for dowry, the other question will be whether soon before her death, the deceased was subjected to the cruelty or harassment in connection with the said demand. All this is relevant when it is established that the death has been occurred otherwise than in normal circumstances.

33. At this stage, it will be also necessary to advert to relevant provisions of Indian Evidence Act, 1872. Section 113-B was brought on the statute book by the Act No.43 of 1986 which reads thus;

"113B Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

. Explanation - For that purposes of this section, "dowry death" shall have the same meaning as in section 304-B of the Indian Penal Code."

The condition for invoking the presumption under the said provision against a person is that it must be shown that soon before the death of a woman she has been subjected by the said person to cruelty or harassment for or in connection with any demand of dowry. If these facts are established, there is a conclusive presumption that such person has caused dowry death within the meaning of section 304-B of the Penal code thereby rendering the person liable for punishment. Before making a detailed discussion about section 304-B and section 113-B, it will be first necessary to see that whether there is an evidence to show that the death of the woman occurred otherwise other than in normal circumstances within the seven years of her marriage. Death is caused on 21st January 1988 which in a very close proximity of the date of marriage which

was solemnised on 15th December 1987. It will be necessary to refer to the material on record. The material on record discloses that the water pot allegedly carried by the deceased was recovered on the next day i.e. 22nd January 1988 and that also at the instance of P.W.No.10 Sopana who was declared as hostile. According to the version of the P.W.No.10 Sopana, it is he who jumped into the well and brought deceased Venubai out of water on 21st January 1988. There is one more circumstance which is very significant. P.W.No.15 Shri Baliram Patil, a Police Head Constable who was at the relevant time attached to Baramati Police station stated that he did not notice the water pot in the well at 9.00 a.m. in the morning. In the examination-in-chief, he stated that he directed the P.W.No.1 to jump in the well and to find out the water pot. Significantly, the learned Public Prosecutor was permitted to ask questions in the nature of cross examination to the said Baliram Patil. More importantly a complaint was made by the P.W.no.1 against the said Baliram Patil about the default in carrying out the investigation and non acceptance of the complaint. P.I.Shirke took over investigation at about 4.00 p.m. on 22nd January 1988 from P.W.No.15-Baliram Patil.

34. The evidence on record discloses that the deceased Venubai came back to her matrimonial home on 21st December 1987 and was taken back by the accused No.1 on 19th January 1988. Immediately, two days thereafter, Venubai was found

dead in the well which is admittedly situated on the property of the accused. Exh.14 is the sketch drawn by the Circle Inspector. The said sketch discloses that there are three wells in the property of the accused No.1. The third well in which dead body of Venubai was found is the farthest from the house of the accused No.1 as compared to the other two wells on the property of the accused No.1. It is very difficult to understand as to why the deceased should proceed to the third well which is farthest from the house for fetching the water when there was the first well close to the house. As stated earlier the deceased had stayed at her matrimonial home only for two days after 19th January 1988. The theory prepounded by the accused is of accidental fall. The injuries on the body of the victim do not support the said theory at all. If the Panchanama of well at Exh.12 is perused it is apparent that there are three steps inside the well above the level of water. It records that an electric pump was fixed on the well for drawing water. As pointed out earlier, only two injuries were found on the person of the deceased. One is a tiny abrasion and another is a superficial abrasion. Considering these injuries and considering the fact that her body was found in the farthest well, it is very difficult to find fault with the finding recorded by the Trial Court that a suicide committed by the deceased.

35. At this stage, it will be necessary to refer various

decisions cited by the learned Counsel appearing for the parties as well as the law laid down by the Apex Court on this aspect. In the case of Prem Singh Vs. State of Haryana [(1998) 8 S.C.C. page 70), the Apex Court was dealing with an Appeal where the conviction of the Appellant was under section 304-B of the Indian Penal Code. The Apex Court held that when medical evidence was showing that the deceased died due to asphyxia as a result of smothering which is an unnatural death and when no explanation was offered by the husband, presumption of dowry death can be raised.

36. In the case of State of Andhra Pradesh Vs. Raj Gopal Asawa and another (2004 S.C.C. page 1933), the Apex Court was dealing with sections 304-B and section 498-A of the Penal Code. The Apex Court held that in case of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. The Apex Court held that circumstantial evidence can be either direct or indirect. The Apex Court held that it is not necessary that there must be a specific agreement for dowry. In paragraph 7 and 8 of the said decision, the Apex Court has held thus :

> "7. Explanation to Section 304-B refers to dowry "as having the same meaning as in Section 2 of the Act", the question : what is the periphery of the dowry

as defined therein / The argument is, there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in Pawan Kumar and others Vs. State of Haryana [1998 (3) S.C.C. page 309].

8. The offence alleged against the respondents is under Section 304-B, I.P.C. which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When section 304-B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect.

It is significant that Section 4 of the Act, was also amended by means of act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the respondents seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3 which refers to giving or taking dowry and Section 4 which deals with a penalty for demand dowry, under the Act and the I.P.C. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry."

37. Thus, the definition of dowry under section 2 of the said Act, 1961 includes demands made subsequent to the marriage. In paragraph 10 of the said decision, the Apex Court held thus:

"10. A conjoint reading of section 113-B of the Evidence Act and Section 304-B, I.P.C. shows that there must be material to show that soon before her death the

victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death" occurring otherwise than in normal circumstances. The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B I.P.C. are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under section 113-B of the Evidence Act, 1872. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the

> concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

38. The decision of the Apex Court in case of Pawankumar and others Vs. State of Haryana [(1998) 3 S.C.C. page 309) will also be relevant for consideration. Section 304-B of the I.P.C. as well as section 113-B of Indian Evidence Act were for consideration of the Apex Court. The Apex Court also considered the meaning of the word cruelty under section 304-B and 498-A of the Penal Code. In the case before the Apex Court, within four days following the marriage, the deceased came back to the mother and told her that her parents in law and husband were taunting her for not bringing scooter and dowry. The question was whether the demand made subsequent to the marriage can be within the meaning of section 2 of the said Act of 1961. The Apex Court held that while interpreting section 2 in the context of section 304-B of the Penal Code, the Court must adopt that construction which suppresses the mischief and advances the remedy. The Apex Court, therefore, held that the definition of dowry has been amended with effect from 19th November 1986 to include the period even after the

marriage. Ultimately the Apex Court held that consistent demands for T.V. and scooter are made from the bride or from her parents after the marriage would constitute demand in connection with the marriage and it would be the case of demand of dowry within the meaning of section 304-B of the Penal Code. In paragraph 18 of the said decision, the Apex Court also dealt with the meaning of cruelty or harassment. The Apex held that even the mental torture in a given case would be a case of cruelty or harassment within the meaning of section 304-B of the Penal Code. The Apex Court held that wilful conduct can be inferred by direct or indirect evidence which could be construed to be such.

39. At this stage, it will be also necessary to see the decision of the Apex Court in case of Kamesh Panjiyar @ Kamles Panjiyar Vs. State of Bihar [(2005) 2 S.C.C. page 388]. The Apex Court held that there are three occasions relating to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The Apex Court, however, held that though there could be a demand of dowry after the marriage but it must in connection with the marriage. The Apex Court in the said case considered the distinction between section 304-B and 498-A. The Apex Court held that the third occasion may be of unending period. The Apex Court held that under section 498-A, the cruelty is itself an offence and there is no limit in time within which

the offence must be committed unlike section 304-B. The Apex Court held that if the prosecution established the case, there can be conviction under both the sections. The Apex court further clarified that the meaning of cruelty and harassment in section 304-B is the same as provided in explanation under section 304-B.

40. In the case of Vithal Tukaram More and others Vs. State of Maharashtra [(2002) 7 S.C.C. page 20], the Apex Court observed that such crimes against the married woman are generally committed within the four walls of a house and many time in secrecy. The Apex Court observed that independent eye-witnesses or other direct evidence is rarely available to the prosecution. But that is no reason to rely on circumstantial evidence which is not of required standard.

41. Another decision of the Apex Court will be relevant at this stage which is relied upon by the learned Counsel for the Appellant in case of Sakhi Mandalani Vs. State of Bihar and others [(1999) 5 S.C.C. page 705]. The Apex Court in the said decision held that once the main part of the charge i.e. the demand of dowry and harassment was not found established, it was not possible to record conviction under sections 3 and 4 of the Dowry Prohibition Act, 1961. However, in the present case, the acceptance of Rs.10,000/- as a dowry prior to the date of marriage has been established. Even if the payment of

dowry subsequent to the marriage as alleged by the prosecution is not established, the established demand and acceptance of Rs.10,000/- is sufficient to convict the accused Nos.1 and 2 for offences under sections 3 and 4 of the said Act of 1961. The learned Advocate for the Appellants also placed reliance on the decision of a Division Bench of this court in case of Arun Dhondiba Kamble and others Vs. State of Maharashtra (1993 Mh.L.J. page 1007). It was held by the Division Bench that demand on the part of the husband or his relative for property after the marriage in conformity with existing custom is not a demand for dowry and therefore where wife commits suicide due to constant pressure for customary presents, her death cannot be called as a dowry death and section 304-B of the said Code will not apply. In the present case, it is not the case of the accused that the demand of a sum of Rs.5000/- and a golden ring made subsequent to the marriage was in conformity with the existing customs of the community. Shri Kate appearing for the Appellants also relied upon the decision of the Apex Court in case of Hiralal and others Vs. State (Government of NCT) Delhi [(2003) 8 S.C.C. page 80]. The Apex Court held that requirement for applicability of sections 304-B and 113-B was that the prosecution must show that the woman was subjected to cruelty or harassment. However, the Apex Court further held that existence of a proximate and live link between the effect of cruelty based on the dowry demand and the death concerned is essential.

Lastly, he placed reliance on the the decision of the Apex Court in case of Kans Raj Vs. State of Punjab and others [(2000) 5 S.C.C. page 207] where the Apex Court has taken a similar view.

42. Considering the law laid down on the point, it will be necessary to advert to the facts. A capital was sought to be made on the behalf of the Appellants of the fact that the demand for payment of Rs.5000/-, a golden ring and a cot with mattress was an afterthought and this has come for the first time in the evidence of P.W.No.1 and other witnesses. In this connection, it will be necessary to refer to the complaint filed in writing by the P.W.No.1 Rajaram on 23rd January 1988 to the Police Sub Inspector, Baramati, District Pune. On 19th March 1990 the learned Trial Judge had passed a specific order after hearing both the parties directing that the said complaint shall be read in evidence and the same was accordingly marked as Exh.59. The P.W.No.1 clearly stated in the complaint that seven to eight days after the marriage his daughter returned back to his house. He described in the complaint in writing that Venubai after coming back to his house had stated that the accused No.2 had told her that he was not liking her and he had married for the sake of dowry. He has also stated that Venubai informed him that accused had instructed her to bring Rs.5000/- being the remaining amount of dowry, a golden ring and a cot with mattresses. He stated

that accused no.2 insisted that she must bring the sum of Rs.5000/- while coming back to her matrimonial home. He stated that on 19th January 1988 Venubai was sent back to her matrimonial home with Chandrabhagabai. He has also stated Chandrabhagabai informed him that on 19th January 1988, the accused Nos.1 to 3 were again asking Venubai as to why she did not bring a sum of Rs.5,000/- with her. P.W.No.1 also described the efforts made by him to collect the amount. There is an acknowledgement of the Police Sub Inspector on Exh.59. Thus, the case regarding the aforesaid demands cannot be said to be an afterthought or an improvement made while deposing before the court.

43. Thus, it cannot be said that the theory of subsequent demand prepounded by the P.W.No.1 is an afterthought. Deceased Venubai was cremated on 22nd January 1988 and the said complaint is filed immediately next day. A submission was made as regards delay in approaching the police. The evidence of P.W.No.13- Dinkar Shirke discloses that the Police Head Constable Patil was investigating the case. He has stated that on 22nd January 1988, he was informed on telephone by the father of the deceased regarding his grievance against the Police Head Constable Patil and therefore he himself took over the investigation. Thus, it is not a case that there is unexplained delay on the part of the P.W.No.1 in approaching the police. As stated earlier, the case regarding further

demand is not an afterthought.

44. So far as further demand is concerned, P.W.No.2 Chandrabhagabai is an important witness as she had accompanied the deceased to her matrimonial home on two occasions. I have already referred to the demand which was disclosed by Venubai when she came back to her father's house on 21st December 1987. The said Chandrabhagabai has deposed about the incident of 19th January 1988 in the night when the accused Nos.1 to 3 asked Venubai as to why she had not brought with her golden ring and a cash of Rs.5000/-. She stated that the accused No.2 told Venubai that in fact he had agreed for the marriage for receiving money. Evidence of more than two prosecution witnesses is very consistent about the demand reported by Venubai. As pointed out earlier the incident of 19th January 1988 is reiterated in the complaint in writing filed by the P.W.No.1 on 23rd January 1988. Thus, it can be said that immediately after the marriage there was a demand of Rs.5,000/-, a golden ring and a cot with mattresses. The evidence discloses that the accused No.1 carried the cot and mattresses and pillows in his bullock cart when he took back deceased Venubai to her matrimonial home on 19th January 1988 and this is followed by the incident in the night on 19th January 1988 when Venubai was questioned by the accused about non compliance with the demand of Rs.5,000/- and a golden ring. It must be borne in mind that the marriage took place

on 15th December 1987 and after staying only for few days Venubai came back to her parents' house and again went back on 19th January 1988 to her matrimonial home. Even in such a short span of time there was a consistent demand for Rs.5,000/- and a golden ring. The Accused No.2 told Venubai that he had married with her only for the sake of money. This is to be considered in the context of the fact that before the marriage the demand by accused Nos.1 and 2 was for dowry of Rs.15,000/- and what was paid by the P.W.No.1 was a sum of Rs.10,000/-. The demand of Rs.5,000/- made immediately after the marriage has obviously a direct connection with the marriage of Venubai with accused No.2. The time at which the demand was made, the manner in which the demand was made and the nature of the demand clearly establishes the connection of the demand with the marriage of Venubai. The demand of Rs.5,000/- and a golden ring must be held to be in connection with the marriage and that is the reason why the demand must be held to be one within the meaning of section 2 of the said Act of 1961.

45. It must be borne in mind that the aforesaid demand was made within few days of the marriage. The demand was reported to P.W.No.1 Rajaram on 21st December 1987 by both Venubai and Chandrabhagabai when they came to his house. The version of P.W.No.1 and P.W.No.2 is that the demand was made by accused persons with a warning that if the same was not complied with,

she will not be maintained. As stated earlier, even in the application dated 23rd January 1988 which is at Exh.59 made by P.W.No.1 Rajaram, the said demand has been specifically mentioned. As stated earlier when the said Venubai went back to her matrimonial home on 19th January 1988, again she was questioned about her failure to bring a sum of Rs.5000/- and a golden ring. It is also established on evidence that a cot with mattresses and pillows was sent by P.W.No.1 Rajaram along with accused No.1 who has visited the house of P.W.No.1 for taking back Venubai to her matrimonial home. Thus, from 15th December 1987 to 21st December 1987 Venubai stayed in her matrimonial home for seven days. Even in such a short span of time, a demand came for Rs.5,000/- with other articles. When she returned to matrimonial home on 19th January 1988, on the very day in the night she was troubled by the accused persons with the same demand of Rs.5,000/- and a golden ring.

46. If the demand is made to a newly married woman in such a manner, one can imagine the state of mental equilibrium of the woman. A woman dreams of great days ahead with hope and aspiration while entering into a marriage, and if from the very next day the husband and in laws start demanding dowry, there cannot be a greater mental torture, harassment or cruelty for any bride. The Apex Court in case of Pawankumar and others (supra) has held that even mental torture in a given case would be a case of cruelty and harassment within

the meaning of sections 304-B and 498-A of I.P.C. Thus, the prosecution has established the demand of dowry by the accused persons in a close proximity to the date of death and mental torture which amounts to cruelty and harassment within the meaning of section 304-B in connection in relation to demand of dowry. So far as this demand is concerned, the evidence establishes that the demand was made by all the three accused persons. Thus, so far accused No.3 is concerned, though the demand of dowry prior to marriage is not established against her, subsequent demand is established against her which attracts section 4 of the said Act of 1961.

47. The learned Trial Judge has recorded a finding that deceased committed a suicide by jumping into the well. I have also referred to the P.M.notes which show that the there were no injuries on the person of the deceased which can support the theory of accidental fall while she was fetching water from the well. It will be necessary to refer to panchnama at Exh.12 which records the position of the well. The said panchnama records that the well is 20 feet deep from the surface of the land and the water level is nine and half feet from the top. The diameter of the well is 32 and half feet. It records that there are three steps inside the well. The map at Exh.14 has been exhibited by the consent of the parties. The map shows that the house of the accused No.1 is situated at the distance of 360 feet from the first well. The

distance between the first and second well is 630 feet and the distance between second and third well is 202 feet. It is very difficult to understand why a newly married woman will be told to fetch water from the well which is situated more than thousand feet away from the house especially when the panchnama records that there was an electric pump fixed near the well for drawing water from the well. I have already pointed out the version of the P.W.No.10 Sopana who is a closed relative of accused no.1. As stated earlier, on 22nd January 1988 in the morning at the instance of P.W.No.15, the P.W.No.10 took out the water pot from the well. Significantly, P.W.No.15 while he was incharge of the investigation recorded the statement only of P.W.No.10 and he failed to record the statements of any other member of the family of the deceased. Supplementary statement of P.W.No.10 was not recorded after he allegedly took out the water pot from the well. This is an unfortunate case where the Head Constable Patil appears to have made efforts to create a case that the death was accidental death and that also without recording the statements of any of the material witnesses. In the cross examination, P.W.No.10 has alleged that one Savitribai went to his house to inquire about the whereabouts of the deceased and the P.W.no.10 informed her to find out whether the water pot was there in the house as if there was only one water pot in the house of the accused. Thus, theory that the deceased had gone to the well to fetch water and that

she accidently fell down in the well cannot be accepted. Considering all these aspects, the learned Trial Judge has and in my view, rightly recorded a finding that the deceased committed suicide by jumping in the well.

48. Thus, in my view all the ingredients of the offence under section 304-B have been established by the prosecution. Since the death has occurred immediately after the marriage, presumption under section 113-B of the Indian Evidence Act, 1872 will squarely apply. It will have to be presumed that the deceased died a dowry death. As stated earlier, the evidence shows that subsequent to the marriage, a demand of dowry was made by the three accused and the deceased was subjected to mental cruelty.

49. The Apex court has held that cruelty contemplated by both sections 304(B) and 498-A of the Penal Code is of the same nature. As narrated earlier, the deceased stayed at her matrimonial home only for 9 to 10 days and within such a short span of time there was continuous demand of dowry as held earlier. I have already held that a case of mental cruelty has been established by the prosecution. As the newly married woman of young age was wilfully subjected to such conduct by the accused, it was obvious that the newly married girl was driven to commit suicide. This is in context of the fact that her father did comply with one of the lesser demands by

supplying a cot with mattress and pillows. However, accused persons were not happy and they were insisting on getting the sum of Rs.5000/- and a golden ring and that is why on the return of matrimonial home on 19th January 1988, the deceased was questioned and harassed as said demand was not complied with. As held earlier, within 7 days of the marriage a threat was given to the deceased that she would not be maintained as a wife if there is a failure to comply with the demands.

50. Thus, the offences under section 306 as well as section 498-A have been proved by the prosecution. A situation was wilfully created by the accused persons which had driven the deceased Venubai to end her life by jumping into the well.

51. Perusal of the operative part of the order shows that for offence under section 498-A read with section 34 of the I.P.C. substantive sentence of R.I. for two years each has been imposed. The punishment for the offence under section 306 is R.I. for five years and for offence under section 304-B the punishment is R.I. for a period of seven years. The punishment for offence under section 3 of the said Act of 1961 is the minimum punishment prescribed by the statute. The offence under section 3 has not been established against the accused No.3 and therefore, to that extent the impugned order will have to be set aside. However, the offence under section 4 of the said Act of 1961 has been established against all the

accused including the accused No.3. For the said offence, learned Judge has not imposed any substantive sentence by observing that severe sentence is imposed for the offence punishable under section 304-B. Therefore, the learned Judge has exercised power under the proviso to sub section 4 by not imposing any punishment.

52. I may not be able to part with the Judgment without referring to the role played by the P.W.No.15 Baliram Patil, the Police Head Constable. Though he was incharge of the investigation till 22nd January 1988, he had chosen not to record the statements of any of the witnesses or of parents of the deceased and he recorded the statement only of P.W.No.10 Sopana who is a close relative of the accused No.1. According to the case of P.W.No.15 and P.W.no.10, water pot was allegedly recovered by the said Sopana from the well at the instance of P.W.no.15. The evidence of the Investigating Officer shows that investigation had to be withdrawn from P.W.No.15. When P.W.No.15 was in witness box, the Public Prosecutor was permitted to ask questions in the nature of cross examination. It is for the District Superintendent of Police, Pune to look into the conduct of the P.W.No.15 Baliram Patil as reflected from the record of the case and to take appropriate steps in the matter.

53. Hence, I pass the following order :

i) The conviction and sentence of the Appellants is confirmed except the conviction of the accused no.3 Appellant No.3-Smt. Namabai Parvati Atole for the offence punishable under sections 3 of the Dowry Prohibition Act, 1961.

ii) The Appellant No.3-accused No.3 Smt.Namabai Parvati Atole is acquitted of the offence punishable under section 3 of the Dowry Prohibition Act, 1961.

iii) Subject to what is stated above, impugned Judgment and Order is confirmed.

. At this stage, Shri Kate appearing for the Appellants seeks time to surrender by pointing out the fact that for a long time the Appellants are on bail.

. Considering the facts and circumstances of the case and considering the time which may be required for typing and signing the Judgment, time of ten weeks is granted to the Appellants to surrender and undergo the sentence.

JUDGE